RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Incorporation by Reference of the Acid Rain Program (LAC 33:III.505) (AQ259ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.505 (Log #AQ259ft).

This rule is identical to federal regulations found in 40 CFR Part 72 (July 1, 2005), and 70 FR 25162-25405210 (May 12, 2005) and 71 FR 25328-25469 (April 28, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule replaces the existing Acid Rain Program regulations with an incorporation by reference of the recently revised federal regulations concerning the Acid Rain Program. This action is necessary in order for Louisiana to adopt the general and specific provisions for the CAIR SO₂ Trading Program, under Section 110 of the Clean Air Act, as a means of mitigating interstate transport of fine particulate and sulfur dioxide. By adopting the Acid Rain Program, 40 CFR Part 72, in its entirety, the state is authorizing EPA to assist the state in implementing the CAIR SO₂ Trading Program.

On March 10, 2005, EPA announced the Clean Air Interstate Rule (CAIR), a rule that will achieve reduction in air pollution by regulating sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions from 23 states and the District of Columbia. These pollutants contribute to levels of fine particles (PM_{2.5}) in areas above the air quality standard in downwind states. In addition, NO_x emissions in 25 eastern states and the District of Columbia contribute to levels of ozone in areas above the air quality standard for 8hour ozone in other downwind states. In developing the CAIR SO₂ regulations and the cap-and-trade program, the Environmental Protection Agency relied on the successful Acid Rain Program/cap-and-trade program. The resulting CAIR SO₂ cap-and-trade program was merged with and the Acid Rain Program use a common SO₂ allowance system cap-and-trade program when CAIR defined CAIR SO₂ allocations as those allocations made under the Acid Rain Program. EPA has promulgated changes to the Acid Rain Program that provide for this common structure reflect the CAIR SO₂ requirements. These revisions actions enable the CAIR SO₂ cap-and-trade program to accept Acid Rain SO₂ allocations for trading, selling, and/or determining compliance with the CAIR SO₂ program. The recent changes to the Acid Rain Program at the federal level due to CAIR will require the state to modify its Acid Rain rule at LAC 33:III.505. The incorporation of the federal Acid Rain Rule will ensure continuity between the Acid Rain Program and the implementation of the CAIR SO₂ Program. The basis and rationale for this rule are to mirror the federal regulations.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Herman Robinson, CPM Executive Counsel

Title 33 ENVIRONMENTAL QUALITY Part III. Air

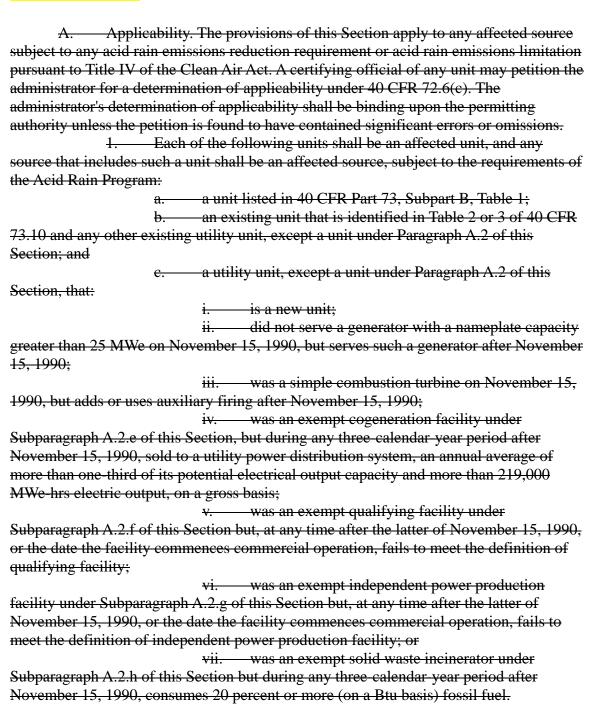
Chapter 5. Permit Procedures

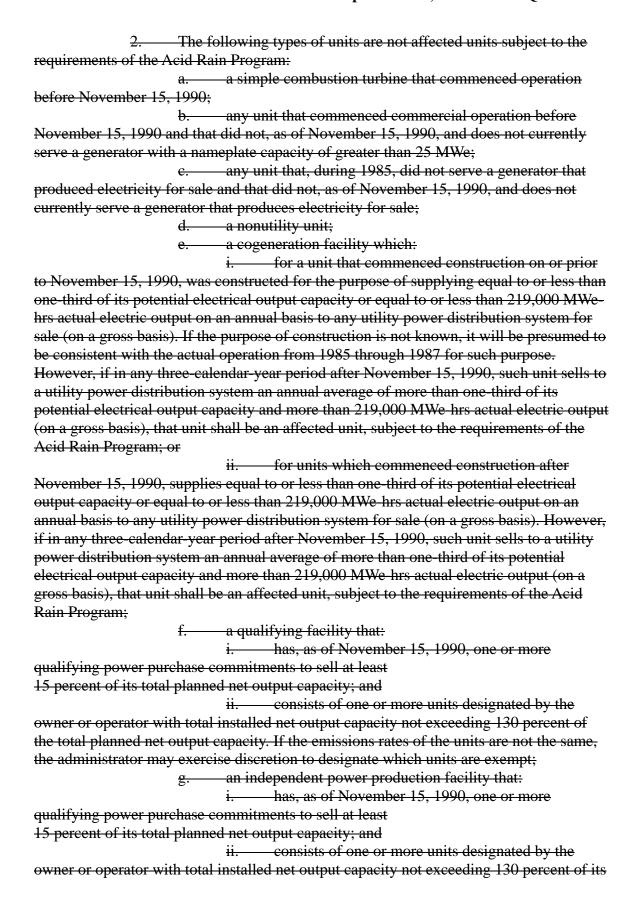
§505. Acid Rain Program Permitting Requirements

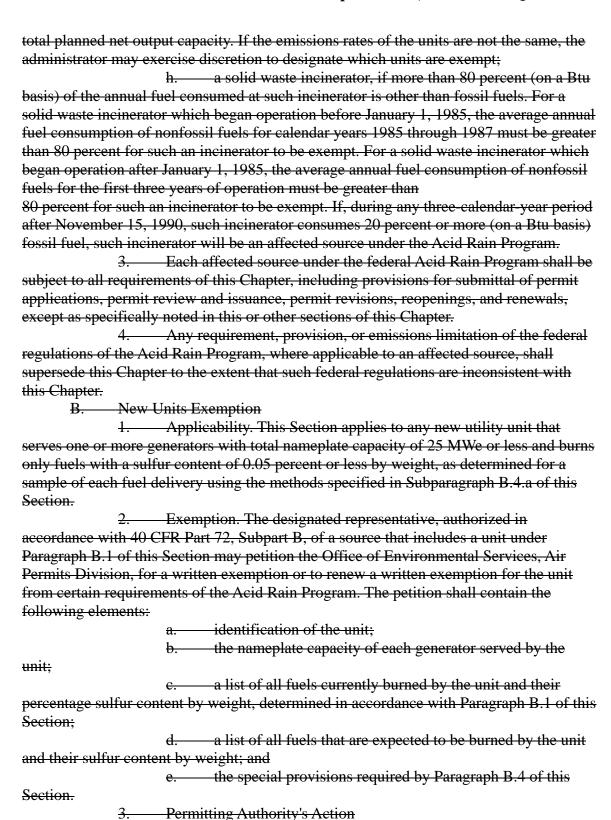
- A. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, July 1, 2005, and as revised at 70 FR 25162-25405, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- A. Acid Rain Program General Provisions. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.1-72.13, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- B. Designated Representative. The Acid Rain Program regulations, published in the Code of Federal Regulations at 40 CFR 72.20 72.25, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- C. Acid Rain Permit Applications. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.30-72.33, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- D. Acid Rain Compliance Plan and Compliance Options. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.40-72.44, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- E. Acid Rain Permit Contents. The Acid Rain Program regulations, published in the Code of Federal Regulations at 40 CFR 72.50-72.51, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- F. Federal Acid Rain Permit Issuance Procedures. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.60-72.69, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

- G. Acid Rain Phase II Implementation. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.70-72.74, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- H. Permit Revisions. The Acid Rain Program regulations, published in the Code of Federal Regulations at 40 CFR 72.80-72.85, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- I. Compliance Certification. The Acid Rain Program regulations, published in the Code of Federal Regulations at 40 CFR 72.90-72.96, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- J. Methodology for Annualization of Emissions Limits. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, Appendix A, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- K. Methodology for Conversion of Emissions Limits. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, Appendix B, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- L. Actual 1985 Yearly SO₂ Emissions Calculation. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, Appendix C, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- M. Calculation of Potential Electric Output Capacity. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, Appendix D, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.
- BN. Copies of documents incorporated by reference in this Section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.gpoaccess.gov/cfr/index.html; from the Department of Environmental Quality, Office of Environmental Services, Air Permits Division; or from a public library.
- CFR Part 72) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency

(EPA). A copy of each Rreports, or notices, or of any other documentation required by the referenced regulations (i.e., 40 CFR Part 72) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Air Permits Division, by the person required to make the submission to "the Administrator." where the state is designated authority by EPA as "the Administrator," or shall be provided to the Office of Environmental Services, Air Permits Division and EPA, where EPA retains authority as "the Administrator."







requirements of Paragraphs B.1 and 2 of this Section, a written exemption from the requirements of the Acid Rain Program except for the requirements specified in this

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The permitting authority shall issue, to any unit meeting the

Subsection or 40 CFR 72.1-6 and 72.10-13; provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's Allowances Tracking System account, allowances pursuant to 40 CFR 72.7(c)(1)(i) and (d)(1). The exemption shall take effect on January 1 of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with Subparagraph B.3.b of this Section; provided that the owners and operators and, to the extent applicable, the designated representative shall comply with the requirements of the Acid Rain Program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the exemption takes effect.

b. In considering and issuing or denying a written exemption under Subparagraph B.3.a of this Section, the permitting authority shall apply the permitting procedures of LAC 33:III.519 and shall:

i. treat the petition as an acid rain permit application

under such provisions; and

ii. issue or deny a proposed written exemption that is treated as the issuance or denial of a permit under LAC 33:III.519.

c. A written exemption issued under this Section shall have a term of five years from its effective date, except as provided in Subparagraph B.4.c of this Section.

4. Special Provisions

a. The owners and operators of each unit exempted under this Section shall determine the sulfur content by weight of its fuel using the methods specified in 40 CFR 72.7(d)(2).

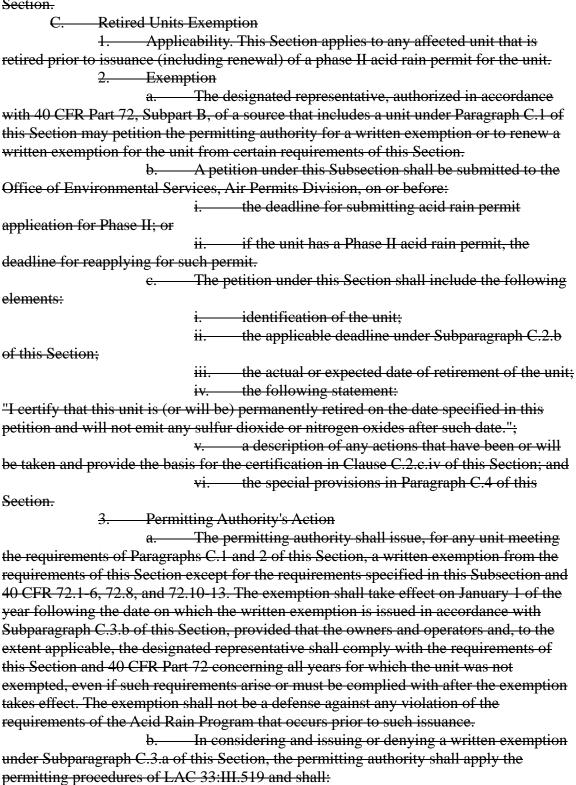
b. The owners and operators of each unit exempted under this Section shall retain, at the source that includes the unit, the records of the results of the tests performed under Subparagraph B.4.a of this Section and a copy of the purchase agreements stating the sulfur content of all such fuel. Such records and documents shall be retained for five years from the date they are created.

c. On the earlier of the date the written exemption expires, the date a unit exempted under this Section burns any fuel with a sulfur content in excess of 0.05 percent by weight (as determined in accordance with Subparagraph B.4.a of this Section), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under this Section and shall be subject to all requirements of the Acid Rain Program, except that:

i. notwithstanding Paragraphs D.2 and 3, the designated representative of the source that includes the unit shall submit a complete acid rain permit application to the Office of Environmental Services, Air Permits Division, on the latter of January 1, 1998, or the date the unit is no longer exempted under this Section; and

ii. for purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial

operation on the date the unit no longer meets the requirements of Paragraph B.1 of this Section.



under such provisions;

treat the petition as an acid rain permit application

ii. issue or deny a proposed written exemption that is treated as a proposed permit under LAC 33:III.531 and 533.

c. A written exemption issued under this Section shall have a term of five years, except as provided in Subparagraph C.4.c of this Section.

4. Special Provisions

a. A unit exempted under this Section shall not emit any sulfur dioxide and nitrogen oxides starting on the date it is exempted.

b. The owners and operators of a unit exempted under this Subsection shall comply with monitoring requirements in accordance with 40 CFR Part 75 and will be allocated allowances in accordance with 40 CFR Part 73.

c. A unit exempted under this Subsection shall not resume operation unless the designated representative of the source that includes the unit submits an acid rain permit application for the unit to the department not less than 24 months prior to the latter of January 1, 2000, or the date the unit is to resume operation. On the earlier of the date the written exemption expires or the date an acid rain permit application is submitted or is required to be submitted under this Subsection and shall be subject to all requirements of this Section and 40 CFR Part 72.

D. Requirement to Apply

1. Duty to Apply. The designated representative of any source with an affected unit shall submit a complete acid rain permit application to the Office of Environmental Services, Air Permits Division, by the applicable deadline in Paragraphs D.2 and 3 of this Section and the owners and operators shall not operate the source without a permit that states its Acid Rain Program requirements

2. Deadlines

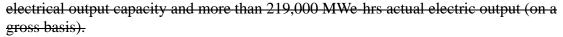
a. Phase II. For any source with an existing unit under Subparagraph A.1.a or b of this Section, the designated representative shall submit a complete acid rain permit application governing such unit during Phase II to the department on or before January 1, 1996.

b. For any source with a new unit under Clause A.1.c.i of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the latter of January 1, 2000, or the date on which the unit commences operation.

c. For any source with a unit under Clause A.1.c.ii of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the latter of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any source with a unit described in Clause A.1.c.iii of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the latter of January 1, 2000, or the date on which the auxiliary firing commences operation.

e. For any source with a unit described under Clause A.1.c.iv of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department before the latter of January 1, 1998, or March 1 of the year following the three calendar year period in which the unit sold to a utility power distribution system an annual average of more than one third of its potential



f. For any source with a unit described in Clause A.1.c.v of this Section, the designated representative shall su bmit a complete acid rain permit application governing such unit to the department before the latter of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any source with a unit described in Clause A.1.c.vi of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department before the latter of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any source with a unit described in Clause A.1.c.vii of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department before the latter of January 1, 1998, or March 1 of the year following the three calendar year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

3. Duty to Reapply. The designated representative shall submit a complete acid rain permit application to the Office of Environmental Services, Air Permits Division, for each source with an affected unit at least six months prior to the expiration of an existing acid rain permit governing the unit during Phase II, or such longer time as may be approved under 40 CFR Part 70 that ensures that the term of the existing permit will not expire before the effective date of the permit for which the application is submitted.

4. Four copies of all permit applications shall be submitted to the Office of Environmental Services, Air Permits Division.

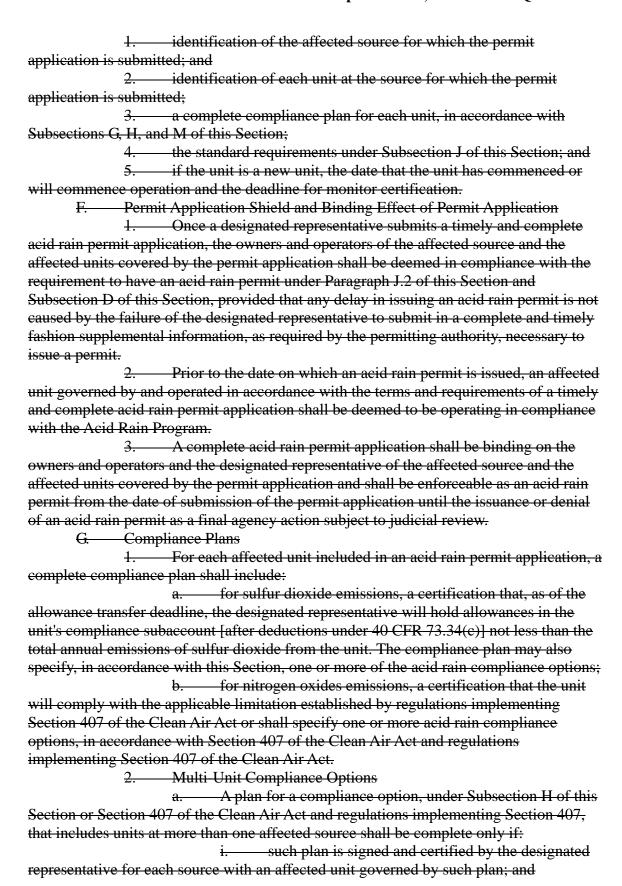
5. Permit Issuance Deadline

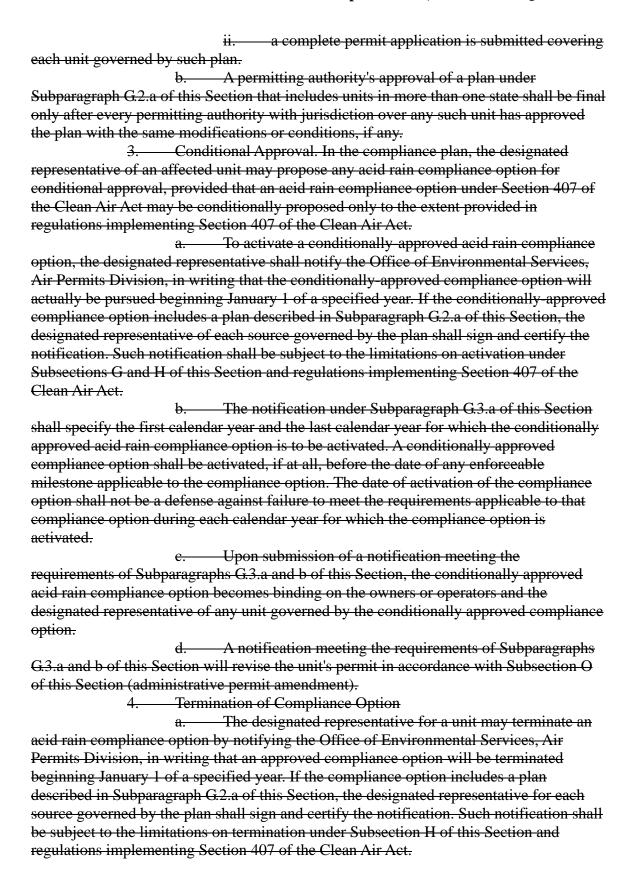
a. i. On or before December 31, 1997, the permitting authority shall issue an acid rain permit to each affected source whose designated representative submitted a timely and complete acid rain permit application by January 1, 1996, in accordance with Subsection R of this Section and meets the requirements of this Section.

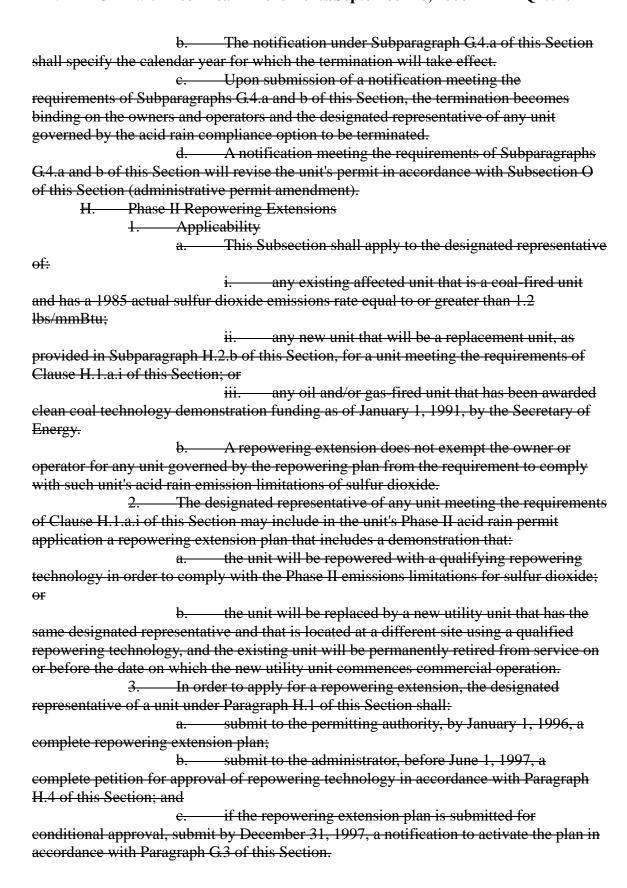
ii. Each acid rain permit issued in accordance with this Section shall have a term of five years commencing on its effective date. Each acid rain permit issued in accordance with Clause D.5.a.i of this Section shall take effect by the latter of January 1, 2000, or where the permit governs a unit under Subparagraph A.1.c of this Section, the deadline for monitor certification under 40 CFR Part 75.

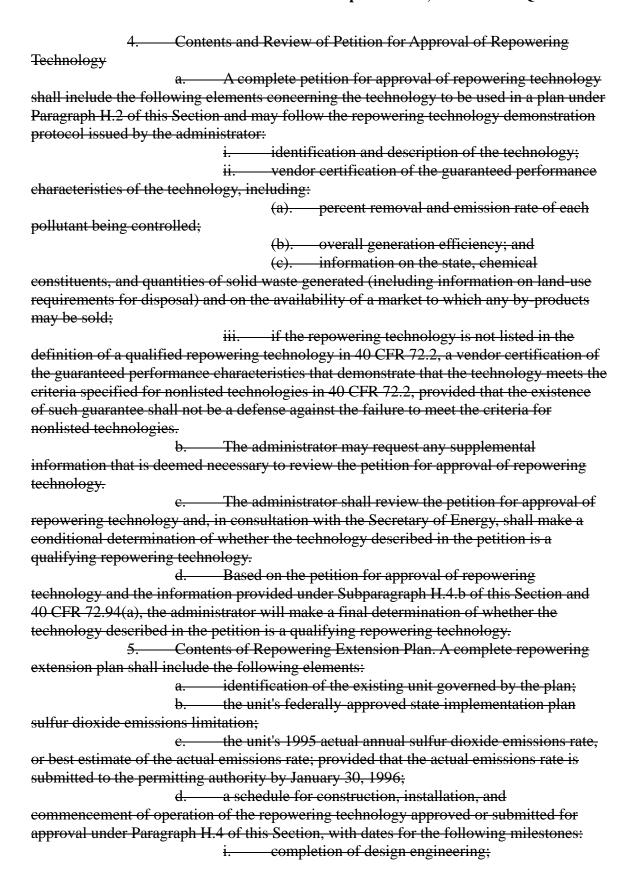
b. Nitrogen Oxides. Not later than January 1, 1999, the permitting authority shall reopen the acid rain permit to add the Acid Rain Program nitrogen oxides requirements provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with Subsection R of this Section. Such reopening shall not affect the term of the acid rain portion of an operating permit.

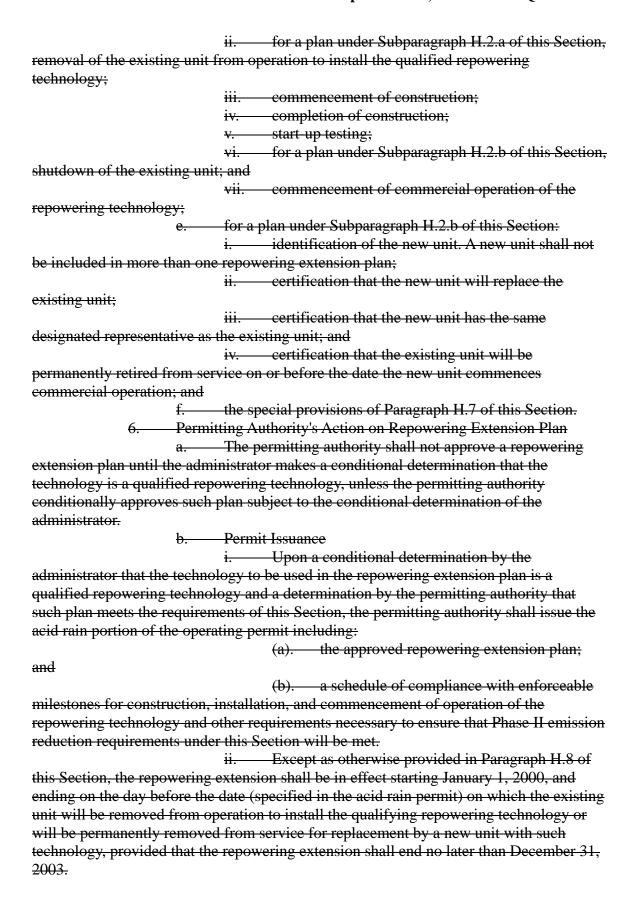
E. Requirements for Acid Rain Permit Applications. A complete acid rain permit application shall contain the following elements in addition to those elements listed in LAC 33:III.517, in a format to be specified by the administrator:

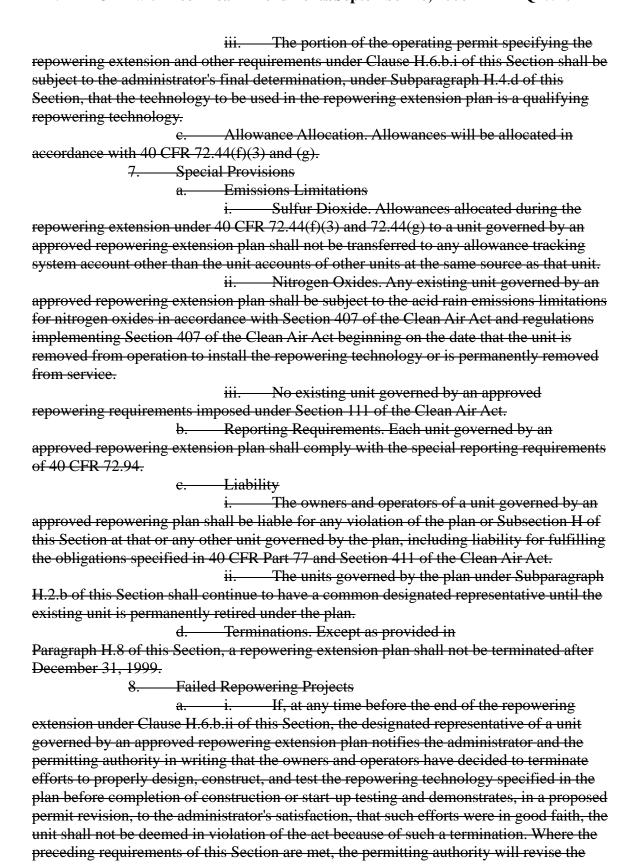












operating permit in accordance with this Section and Clause H.8.a.ii of this Section and Subsection M of this Section (permit modification).

ii. Regardless of whether notification under Clause H.8.a.i of this Section is given, the repowering extension will end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under 40 CFR 72.94.

b. If the designated representative of a unit governed by an approved repowering extension plan demonstrates to the satisfaction of the administrator, in a proposed permit revision, that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits, the unit shall not be deemed in violation of the act because of such failure to achieve the emissions reduction limitations. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. Where the preceding requirements of this Section are met:

i. the permitting authority will revise the acid rain portion of the operating permit in accordance with Clauses H.8.b.ii and iii of this Section and Subsection M of this Section (permit modification);

ii. the existing unit may be retrofitted or repowered with another clean coal or other available control technology;

iii. the repowering extension will continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 21, 2003.

I. Permit Contents

1. Each acid rain permit (including any draft or proposed acid rain permit) will contain the following elements:

a. all elements required for a complete acid rain permit application under Subsection E of this Section, as approved or modified by the permitting authority;

b. the applicable acid rain emissions limitation for sulfur

dioxide; and

c. the applicable acid rain emissions limitation for nitrogen

oxides.

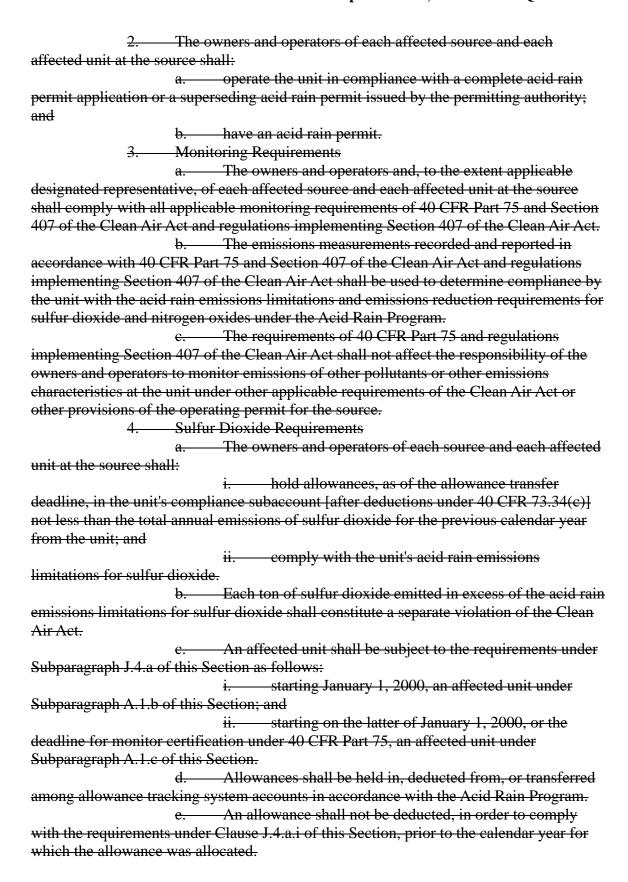
2. Each acid rain permit is deemed to incorporate the definitions of terms under 40 CFR 72.2.

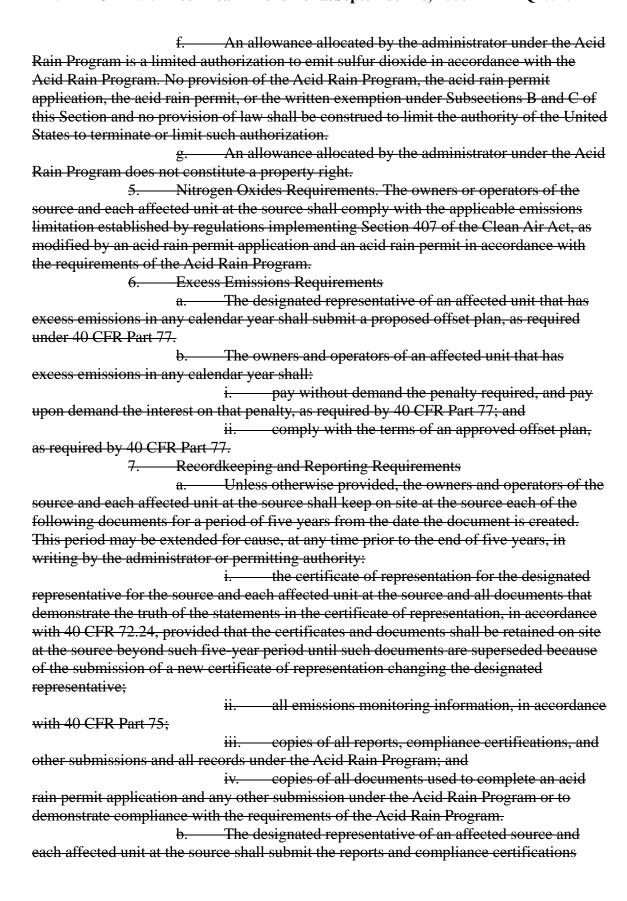
J. Standard Requirements

1. The designated representative of each affected source and each affected unit at the source shall:

a. submit a complete acid rain permit application under this Section in accordance with the deadlines specified in Subsection D of this Section;

b. submit in a timely manner any supplemental information that the permitting authority determines isnecessary in order to review an acid rain permit application and issue or deny an acid rain permit.



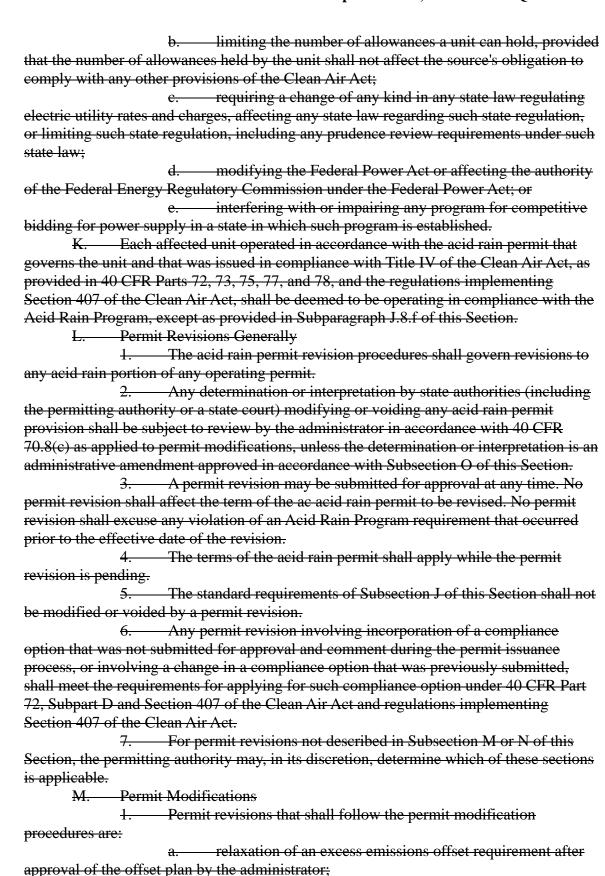


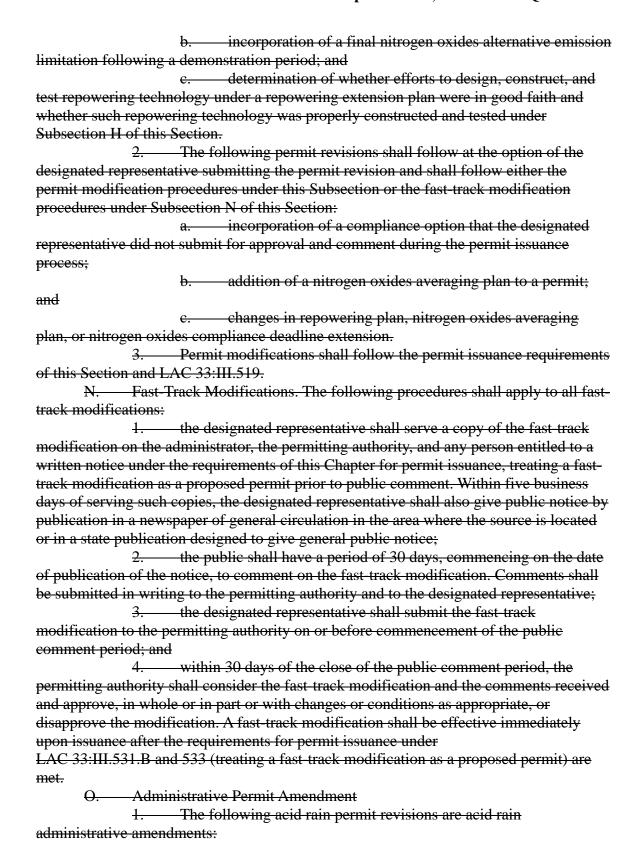
required under the Acid Rain Program, including those under 40 CFR Part 72, Subpart I and 40 CFR Part 75.

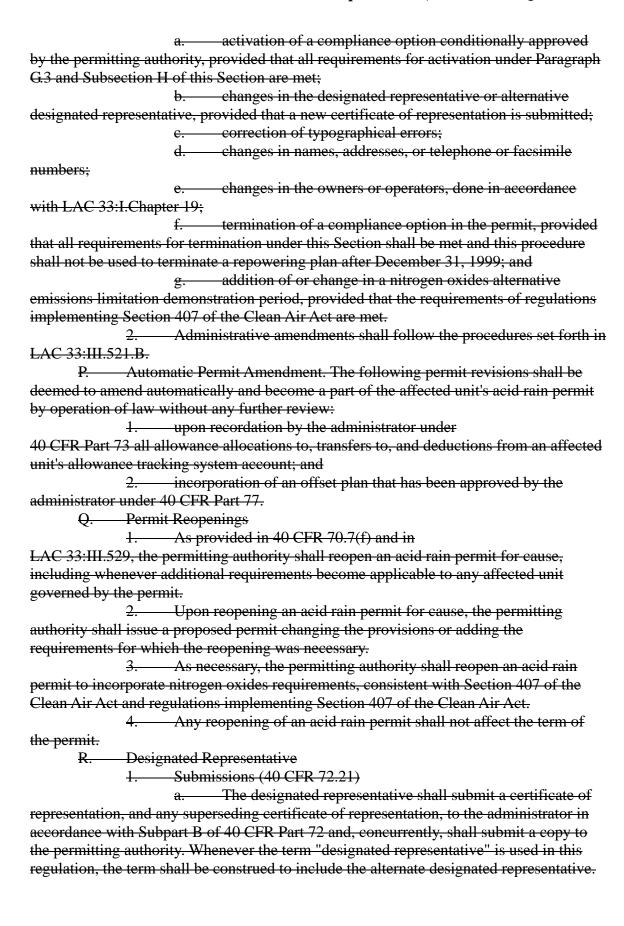
8. Liability

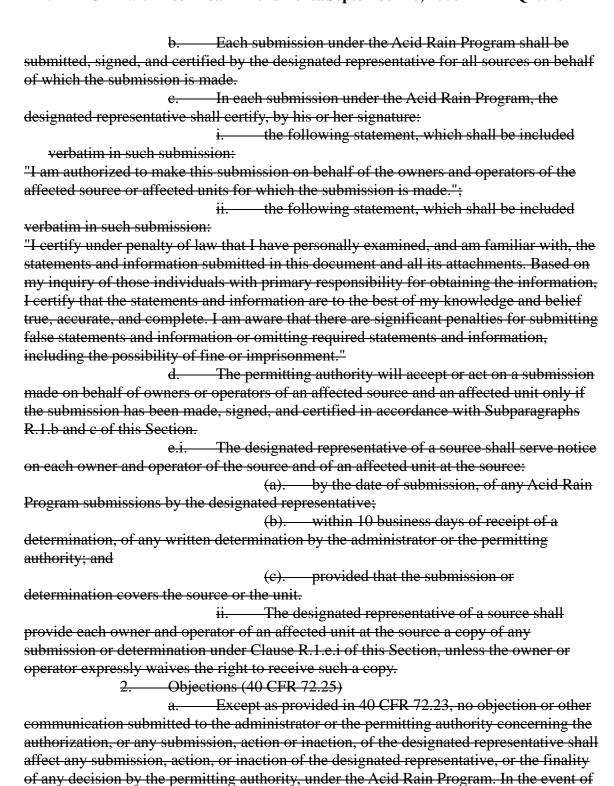
- a. Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete acid rain permit application, an acid rain permit, or a written exemption under Subsections B or C of this Section, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement pursuant to Section 113(c) of the Clean Air Act.
- b. Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement by the administrator, pursuant to Section 113(c) of the Clean Air Act and 18 U.S.C. 1001, and by the permitting authority.
- c. No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.
- d. Each affected source and each affected unit shall meet the requirements of the Acid Rain Program.
- e. Any provision of the Acid Rain Program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.
- f. Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under Subsection H of this Section (Phase II repowering extension plans) and Section 407 of the Clean Air Act and regulations implementing Section 407 of the Clean Air Act, and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 (including 40 CFR 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative.
- g. Each violation of a provision of 40 CFR Parts 72, 73, 75, 77, and 78 and regulations implementing Sections 407 and 410 of the Clean Air Act by an affected unit, or by an owner or operator or designated representative of such unit, shall be a separate violation of the Clean Air Act.
- 9. Effect on Other Authorities. No provision of the Acid Rain Program, an acid rain permit application, an acid rain permit, or a written exemption under Subsection B or C of this Section shall be construed as:
- a. except as expressly provided in Title IV of the Clean Air Act, exempting or excluding the owners and operators and to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Clean Air Act, including the provisions of Title I of the Clean Air Act relating to applicable national ambient air quality standards or state implementation plans;

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b. The permitting authority will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any

the effect of any action or inaction under the Acid Rain Program.

such communication, the permitting authority is not required to stay any submission or

designated representative, including private legal disputes concerning the proceeds of allowance transfers.

S. Acid Rain Permit Appeal Procedures

- 1. Appeals of the acid rain portion of an operating permit issued by the permitting authority that do not challenge or involve decisions or actions of the administrator under 40 CFR Parts 72, 73, 75, 77 and 78 and Sections 407 and 410 of the Clean Air Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in the administrative and judicial appeals regulations established by the state. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and Section 307 of the Clean Air Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is qualifying repowering technology.
- 2. No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than 90 days or shorter period as provided by the applicable state appeals procedures following, respectively, issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.
- 3. The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit provision or denial of an acid rain permit.
- 4. No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:
- a. the allowance allocations for any year during which the appeal proceeding is pending or is being conducted;
 - b. any standard requirement under Subsection J of this

Section:

- c. the emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR Part 75;
 - d. uncontested provisions of the decision; and
- e. the terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.
- 5. The permitting authority will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within 30 days of the filing of the appeal.
- 6. The permitting authority will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with LAC 33:III.533.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.
HISTORICAL NOTE: Promulgated by the Department of Environmental
Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741

FINAL RULE with Technical Amendments/September 20, 2006 AQ259ft

(December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 21:678 (July 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2446 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2429, 2436 (October 2005), LR 32:**.